



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 8, 1998

Ms. Carla Robinson  
Assistant City Attorney  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

OR98-0927

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113930.

The City of College Station (the "city") received an open records request for:

Letter to Mr. George K. Noe from Special Committee on Engineering  
and Construction Management, dated January 6, 1998.

Memorandum to Skip Noe, City Manager from Jim Callaway, Acting  
director of Development Services, dated February 7, 1997.

You submit the marked documents as responsive to the request and contend the requested materials are exempted from required public disclosure pursuant to section 552.111 of the Government Code.

Section 552.111 of the Government Code exempts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added).

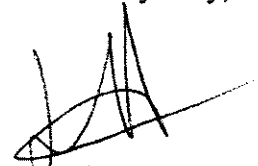
Although section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation, *see* Open Records

Decision No. 615 (1993) at 5, if the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982). After reviewing the materials before us, we agree that the information at issue pertains to a policy matter before the city and that any factual information contained in these records is inextricably intertwined with the protected information.

We note that some of the information you seek to withhold was submitted to the city by a committee composed of "professionals from the community," as outside parties. In Open Records Decision No. 429 (1985), this office indicated that information protected by section 552.111 must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283 (1981), 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 552.111. Open Records Decision No. 464 (1987). *See Wu v. National Endowment of the Humanities*, 460 F.2d 1030 (5th Cir.), *cert. denied*, 410 U.S. 926 (1972). The ultimate test to which these factors are directed is whether the governmental entity intended the advice, opinion, or recommendation to play a role in its decision-making process. *See* Open Records Decision No. 464 (1987). We note that section 552.111 may apply to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task within the authority of the governmental body. Open Records Decision No. 631 (1995). Assuming the city specifically requested the opinion of the outside parties, in the instant matter, a committee charged with the task of reviewing the engineering and construction management functions of the city and to make findings and recommendations to the city, we conclude the city may withhold the marked portions of the documents at issue pursuant to section 552.111 of the Government Code and release the remaining portion of the documents.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', written over a horizontal line.

Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/gle

Ref.: ID# 113930

Enclosures: Submitted documents

cc: Mr. Peter B. Keating, Ph.D.  
8411 Shadow Oaks  
College Station, Texas 77845  
(w/o enclosures)